

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**AXION POWER INTERNATIONAL,  
INC., WILLIAM AND TRACY AHEARN,  
h/w, SALLY FONNER, and JAMES  
SMITH, M.D.,**

**Plaintiff,**

**Case No. 07 CV 11493 (RWS)**

**-against-**

**MERCATUS & PARTNERS, LTD., CARI  
MASI a/k/a CARY MASI, BANCA MB  
S.p.A., DWIGHT PARSCALE,  
STEPHANO CEVOLO,**

**Defendants.**

***DECLARATION IN SUPPORT OF  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION***

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Pursuant to 28 U.S.C. § 1746, I, Cary Masi, declare as follows:

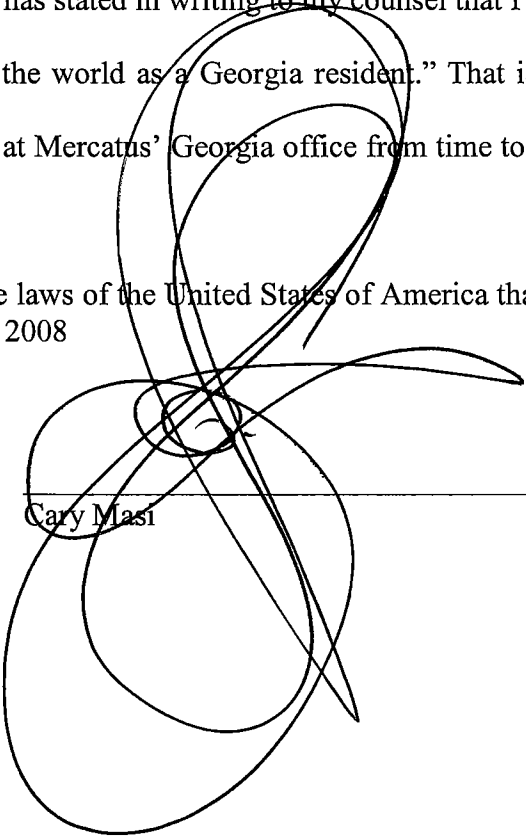
1. I am one of the defendants in this matter.
2. I currently reside and, at all relevant times, have resided at 5101 NW 70<sup>th</sup> Avenue, Ocala, Florida 33482-6740. I am registered to vote in Florida, I vote in Florida, and my automobile is registered in Florida (See Exhibit A hereto). I have no living quarters in Georgia and I do not reside in Georgia.
3. Defendant Mercatus & Partners, Ltd. ("Mercatus") has an office in Alpharetta, Georgia. On occasion, I spend time at that office doing work on behalf of Mercatus. When I or other representatives of Mercatus send out correspondence from the Georgia office, we frequently do so on Mercatus letterhead, with my name on it, underneath which it states: "Mercatus Agent." (See exhibit B hereto which was produced by plaintiffs' counsel.) I do not live in Georgia, however. I live in Ocala, Florida.

4. The Georgia office is just that: an office and not a home or a residence. It has no beds or living quarters. When I am working at the Georgia office, I eat my meals out and I sleep at a hotel or motel or at my ex-wife's home.

5. Plaintiff Sally Fonner, who lives in Dunedin, Florida, knows that I live in Ocala, Florida. She and I have discussed that fact on many occasions. In fact, the Amended Complaint was served on me at my home in Ocala, Florida.

6. I understand that plaintiffs' counsel has stated in writing to my counsel that I have "repeatedly and continually held" myself "out to the world as a Georgia resident." That is not true. Once again, I am physically present working at Mercatus' Georgia office from time to time but I do not live there. I reside in Ocala, Florida.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 7, 2008



Cary Masi